

Sterling Boiler & Mechanical, Inc. and William Keith Addington

Plumbers and Steamfitters Local 136, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO-CLC and William Keith Addington. Cases 25-CA-22680 and 25-CB-7340

October 26, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On April 7, 1995, Administrative Law Judge Martin J. Linsky issued the attached decision. The General Counsel filed exceptions and a supporting brief,¹ and Respondents Sterling Boiler & Mechanical, Inc. and Plumbers and Steamfitters Local 136, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO-CLC each filed cross-exceptions and a supporting brief, an answering brief, and a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ We deny the Respondent Union's motion to quash the General Counsel's exceptions and supporting brief. We find that the General Counsel's exceptions and supporting brief substantially comply with Sec. 102.46(b) and (c) of the Board's Rules.

² The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ In agreement with the judge, we find it unnecessary to decide the issue of whether the Joint Apprenticeship Training Committee is an agent of the Respondent Employer and/or the Respondent Union.

Merrie Thompson, Esq., for the General Counsel.

Larry R. Downs, Esq., of Evansville, Indiana, for the Respondent Employer.

Charles L. Berger, Esq., of Evansville, Indiana, for the Respondent Union.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. William Keith Addington, an individual, who was dismissed as a student from a joint apprentice program jointly operated by Plumbers Local 136 and the Mechanical Contractors Association of Southern Indiana, Inc., and, as a result, fired from his job with Sterling Boiler & Mechanical, Inc., filed, on August 16, 1993, a charge in Case 25-CB-7340 against Plumbers Local 136 (Respondent Union) and a charge in Case 25-CA-22680 against Sterling Boiler & Mechanical, Inc. (Respondent Employer) alleging that he was unlawfully expelled from the Joint Apprenticeship Training program and unlawfully discharged.

On April 7, 1994, the Regional Director for Region 25 issued a complaint alleging that the Respondent Union violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act), and that the Respondent Employer violated Section 8(a)(1) and (3) of the Act based on a theory that Addington was expelled from the apprenticeship program and fired from his job because he engaged in protected concerted activity. Respondents deny in their answers to the complaint that they violated the Act in any way.

I find that the Act was not violated and will recommend that the complaint be dismissed in its entirety.

A hearing was held before me in Evansville, Indiana, on November 7, 8, and 9, 1994.

On the entire record in this case, to include posthearing briefs submitted by the General Counsel, Respondent Employer, and Respondent Union, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Employer, a corporation, has an office and place of business in Evansville, Indiana, where it is engaged in the commercial plumbing and steamfitting business.

Respondent Employer admits, and I find, that it is an Employer engaged in commerce within the meaning of Section 2(2), (6), and (7) the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent Union admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Overview

William Keith Addington was an employee of Respondent Employer. His employment was contingent on him either becoming a journeyman or continuing his employment as an apprentice, which was his status, which, in turn, was contingent on him remaining a student in good standing in the ap-

prenticeship program run by the Joint Apprenticeship Training Committee (JATC).

The JATC is a Taft-Hartley Section 302(c) Trust governed by a board of trustees of six members. Three trustees are selected by the Union and three trustees are selected by the Mechanical Contractors Association of Southern Indiana, Inc., a multiemployer bargaining entity of which the Respondent Employer is a member. As such the JATC is neither an employer nor a union within the meaning of the Act. See *NLRB v. Amax Coal Co.*, 453 U.S. 322 (1981). However, the JATC could be, depending on the facts, an agent of either an employer or a union. See *Plumbers Local 136 (Sandleben Plumbing Co.)*, 220 NLRB 850 (1975), where the Board found the JATC to be an agent of the employer and the union and, interestingly enough, the union in that case was the same union as the Respondent Union in this case.

But whether the JATC is considered an agent of the Respondent Employer and/or the Respondent Union is not the ultimate issue in deciding whether Addington was terminated from the apprenticeship program for a lawful or an unlawful reason. I find that Addington was terminated by the JATC lawfully. Accordingly, the Respondent Employer had no choice under its collective-bargaining agreement with the Union but to discharge him because Addington, once expelled, was neither, as required, a journeyman nor an apprentice enrolled in the apprenticeship program run by the JATC.

The JATC runs a school. It goes without saying that the faculty and not the students run a school. If the JATC lawfully dismissed Addington from the school then neither the Respondent Employer nor the Respondent Union violated the Act.

The apprenticeship program is 5 years in length. Addington was in his second year of the program when expelled. Apprentices work full time for various employers during the day and go to school at night.

B. The Dismissal of William Keith Addington

I note at the outset that I give no weight to the testimony of Dirk Euler who testified that Addington told him shortly before Addington's expulsion from the apprenticeship program that he (Addington) wanted to be kicked out of the apprenticeship program. I believe Euler was mistaken. Addington's testimony that he merely told Euler he wanted to tell off Larry Wagner, the coordinator of the apprenticeship program, is more credible.

In addition I give no weight to the testimony of Lynda Hester that union and JATC officials told her, in effect, to fabricate a case of disruption of the JATC against Addington prior to Addington's expulsion from the apprenticeship program. Hester herself was fired from her position with the JATC and her affidavit reflects that she was told by JATC officials after Addington was expelled to keep a record of his contacts with the JATC and any disruptive behavior he engaged in.

Addington began his 5-year apprenticeship in the fall of 1991. The first year of school was the 1991-1992 school year. His second year started in the fall of 1992. Shortly after he became an apprentice Addington complained to the Union about safety conditions and his place of employment. The conditions were corrected. Addington later moved on to work for the Respondent Employer. One of four trustees who unanimously voted to expel Addington worked for the em-

ployer about whom Addington complained but this was not a factor in his vote to expel Addington some 1-1/2 years later.

In September 1992 Addington by himself and not as a representative of any other apprentices went to the office of Larry Wagner, the JATC coordinator, and complained, in the presence of Wagner and an employer named Bud Howard, about the wages he was paid (which were set by the JATC) and about the time of class, namely, that he wanted the hours of class modified to be more convenient to his schedule. Howard was apparently taken aback by Addington's attitude and told Addington to quit if he didn't like the way the apprenticeship program was being run. Wagner properly considered this activity by Addington to be disruptive and not appropriate for an apprentice with the right attitude.

In the spring of 1993 Addington and nine other apprentices were taking a pneumatics course. The pneumatics course was taught by Mike Brown, who is the brother of Randy Brown, the union business manager and a member of the JATC board of trustees.

According to Addington he and his fellow students in the pneumatics class thought that the instructor, Mike Brown, was covering the material in class too quickly and, as a result, the students could not keep up with the material.

On two occasions Addington and a fellow class mate and apprentice Sam Morrow went to Larry Wagner and complained that the instructor Mike Brown was going too fast for the students to keep up with the subject and that Brown had handed out some inaccurate materials. Wagner said he'd look into it. Wagner reported back to them that the instructor runs the class and he's in charge.

In February Mike Brown gave a pneumatics test to his class. Six out of the ten students in the class, to include Addington, failed the test. Addington failed by only one point. He got a 69 and 70 was the passing grade. Addington was upset. Students were expected to maintain a 70-percent average each semester. Addington spoke to Mike Brown and told Brown that he (Addington) wanted to be given some extra credit work to bring his grade up to a passing one. Brown said that no extra credit would be given and Addington and the others should pay attention in class and study hard. According to Mike Brown this test was given early in the semester and the students had plenty of time to get their grades up to passing. In fact all nine students left in the class after Addington's expulsion did pass the course. Addington was not satisfied with this answer and told instructor Mike Brown in front of all the students in class that he was going over Brown's head.

One night Addington got up in class and complained again to Mike Brown about the test. Mike Brown inquired why the other students weren't complaining as well and Addington said it was because his classmates were "chickenshits." This was at the end of class or just after class ended and Addington's fellow students heard Addington call them "chickenshits." The other students, apparently angry at Addington, cursed back at him. Clearly there was disruption in the class caused by Addington. Mike Brown sent Addington to see Wagner.

Larry Wagner, when he was informed what happened, gave Addington a notice on Tuesday night, March 2, 1993, to personally appear before the JATC at 1 p.m. on Wednesday, March 3, 1993. When given the written notice, Adding-

ton, according to Wagner, “blew up” and was quite angry and said to Wagner words to the effect “go ahead and kick me out. I’ll collect unemployment.” Addington was told to bring a copy of a letter he claimed he had written to the International Union to the meeting on March 3, 1993. Addington, however, had never sent a letter to the International even though he had threatened instructor Mike Brown that he had done so.

The JATC, as noted, is run by a board of trustees with three trustees appointed by the Union and three trustees appointed by the MCA. Randy Brown, one of the Union board appointees, abstained from voting on the Addington matter. Two union trustees and two MCA trustees unanimously voted to expel Addington from the apprenticeship program. Two of the four trustees, Employer-appointed trustees Arnold Neible and Lawrence Muensterman, testified before me and were credible. The union trustees were Lowell Granderson and Jim Pittsford. They did not testify. According to Neible and Muensterman, Addington was expelled from the apprenticeship program because of his attitude and because he disrupted class. Needless to say the instructor runs the class and not the students and Addington in calling his classmates “chickenshits” had disrupted class. Addington was not expelled for concertedly complaining with Sam Morrow that instructor Mike Brown was going too fast in class.

It is clear from the credited testimony taken as a whole that if Addington had gone before the JATC, apologized for his behavior, agreed to conform his behavior to that expected of a student, and had promised the JATC that he would behave in class the JATC would not have expelled him from the program. At one point Union Trustee Jim Pittsford asked Addington if he had ever been in the service and when Addington said no Pittsford responded that if he had he would know how to take orders. Addington, instead of saying he’d follow orders, asked Pittsford if he was supposed to walk off a bridge if asked to do so. When asked if he would behave in class Addington would condition his answer on whether or not he (Addington) thought the instructor was right. Addington kept bringing up at his meeting with the JATC the pneumatics test he flunked and the failure to be given an opportunity to earn extra credit even though he was told that was not the issue. Addington’s demeanor and attitude toward the JATC was terrible.

The facts are that Addington, although he had good grades during his 1-1/2 years in the apprenticeship program (see G.C. Exh. 21) and was doing okay at work (see the testimony of John Vinitski of Sterling Boiler), he nevertheless disrupted class by calling his classmates “chickenshits,” wouldn’t take no for an answer from either Larry Wagner or

Mike Brown and when he appeared before the JATC he refused to unconditionally promise to conform his conduct to the requirements of an apprentice. Addington, I find, was expelled from the apprenticeship program not because he engaged in any protected concerted activity but because he disrupted class and did not take advantage of the opportunity, when he appeared before the JATC, to express his remorse and promise not to be disruptive. As Employer Trustee Muensterman credibly testified: “[H]e (Addington) would continue to lead the class in an insubordinate manner against the instructors, that he would continue to disrupt class, that he would—his complete lack of respect for the instructor and the coordinator led us to believe that we were going to continue to have problems with him, with his conduct with the coordinator and the instructor.” (Tr. 444.)

Having been expelled from the apprenticeship program and since he was not yet a journeyman Respondent Employer was required by its collective-bargaining agreement with the Union to terminate his employment and did so. Neither Respondent Employer nor Respondent Union, even if the JATC is deemed their agent, violated the Act. It could be that I or someone else would not have expelled Addington but the board of trustees runs the JATC and can act harshly if they deem it appropriate just so long as they act lawfully as they did here.

CONCLUSIONS OF LAW

1. Respondent Sterling Boiler & Mechanical, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Plumbers and Steamfitters Local 136, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO-CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. Neither Respondent Employer nor Respondent Union has engaged in the unfair labor practices as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The complaint is dismissed in its entirety.

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.